

1 I want to speak just briefly about the difference in the
2 proposals. ENA's proposal is, in fact, to provide Internet
3 access in the schools, a point of presence in the schools.

4 The school systems will not be in the business of buying
5 routers and hubs and ISDN lines or anything else; they will be
6 getting in the schools' Internet access. It is clear
7 from the FCC a list of eligible services that Internet access
8 is, in fact, a service that is covered that is eligible for
9 E-rate funding.

10 ISIS' proposal appears to be -- it is not to actually own
11 the network and provide the services. It appears that their
12 proposal is to continue essentially with the network as it is
13 with management; they will do management of the network; that
14 is really different. A State-owned network, a network owned by
15 the schools, or ran by schools or by the State is treated very
16 differently in the E-rate funding; for example, an independent
17 Internet provider.

18 Without going into all of the details about that, some of
19 the language that has been cited as disallowing certain kinds
20 of expenses apply to that situation. If a school or school
21 system wanted to build its things, then that is a different
22 situation. ENA proposes to provide services at different and
23 increasing levels and to charge for those service levels.

24 Tennessee, I assume most of you are aware of this, but
25 Tennessee was truly on the cutting edge of getting all of its

1 public schools into a network and putting them through the
2 State's backbone to all kinds of information and have those
3 available to them.

4 The FCC will, therefore, be seeing proposals from, for
5 example, Tennessee. Well, that has already been done and
6 economy of scale have been realized and will be continued to be
7 realized, actually, for the students versus some states where
8 may be they are not going to get an application from a single
9 school or a single school system. That is why the information
10 regarding what -- I wrote this down when Ms. Shrago said it.

11 For example, if I'm a school and I'm not in a state where
12 they have all of this stuff and they can connect me up to the
13 backbone and everything. If I wanted to go out and buy the
14 same thing that I'm going to be able to get through ENA's
15 proposal, I would pay, I believe you said 1,770 per school, per
16 month. So the FCC is going to see that. They are going to see
17 that kind of charges. ENA's proposal is about 1,000 per month
18 when you break it down, per school, for the State of Tennessee.
19 This is not something that is going to shock the FCC. It is
20 certainly a very reasonable cost for this service to the
21 schools and to the students of Tennessee.

22 I want to talk briefly about why ENA would, in fact, buy
23 this network. This network is more than pieces of equipment;
24 it is more than routers and hubs. It is, in fact, the routers
25 and hubs and all of the equipment, the ISDN lines, the

1 training, the installation, the fact that there is a whole --
2 it is almost like it has this value and this importance that
3 goes beyond certainly the separate little pieces of equipment.
4 It is an ongoing concern with the relationships that need to be
5 established that are established.

6 In order for ENA to provide that kind of service on July 1,
7 we need that network or we need to go build our own and try to
8 establish those relationships and buy those things that are not
9 equipment as well as those things that are equipment. That is
10 why it is valuable to us. That is why it is worth \$7.5 million
11 to us. We think the State of Tennessee has the right to get
12 fair market value for its investment in the network. We submit
13 that that is fair market value to us.

14 ISIS has proposed filing with the FCC again. As we now
15 understand, it is not just proposed, it includes a statement
16 that ENA's proposal as invited and accepted by the State is a
17 "fraudulent scheme". We must object to that characterization
18 and that language. In Tennessee, under Tennessee law, if you
19 are going to accuse somebody of fraud, you have to treat it
20 with very specificity; you have to allege very specific acts.
21 In other words, we take that very seriously in Tennessee.

22 Nothing about the submission to the FCC can at all be
23 considered fraudulent. Odd details of the proposed contract
24 are disclosed. It is all public record; it is all being
25 disclosed and no one is trying to hide anything. It is not

1 fraudulent for the State of Tennessee to attempt to maximize
2 the availability of E-rate funding for its students.

3 While ISIS may truly believe there is something in ENA's
4 proposal that are not E-rate eligible, the State believes that
5 they are and we believe that they are. A straight forward
6 disagreement over that issue does not support or justify
7 inflammatory, and frankly, insulting language that ISIS has
8 used regarding ENA and the State in that filing.

9 ISIS has long known of the possibility of selling to a
10 proposer, the network. ISIS even asked a question about that
11 potential sale and how that fit in the cost proposal. Never
12 until 15 days before the window is going to close for E-rate
13 eligibility, has ISIS raised, as far as I known, its concern
14 about that eligibility.

15 Now without waiting for this committee to rule on the
16 protest they have, in fact, apparently without -- I'm not sure
17 with what apparent standing, filed an inflammatorily written
18 document which can only be interpreted with the attempt, now,
19 to jeopardize the State's application for E-rate funding.

20 We could not leave that language and that characterization
21 of our proposal and the State's acceptance of that proposal
22 unaddressed. Let me move quickly to what I think will be our
23 last issue, which is the financial responsibility and issue.

24 COMMISSIONER HAWKINS: That will be Exhibit 6.

25 (Whereupon, the aforementioned document was

1 marked as Exhibit No. 6.)

2 MS. COTTRELL: Essentially, all this does is
3 collect for you the information that is found in the proposal
4 in the RFP and in the evaluation. Let's look at exactly what
5 the RFP says the requirements are.

6 As you will see, it says, said documentation shall include:
7 A description of the Proposer organization's size, etc., that
8 is not really an issue. A statement as to whether, in the last
9 (10) years, the Proposer has filed bankruptcy or insolvency;
10 that doesn't appear to be an issue. Other pertinent financial
11 information by which the State may reasonably formulate an
12 opinion about the relative stability and financial strength.
13 This information must include the most recent audited financial
14 statement, or in lieu of such, a banking reference and a credit
15 rating. It says, a banking reference and a credit rating if
16 you do not have a financial statement.

17 On the proposal evaluation was a maximum of two points.
18 ENA was awarded 1.75 points. We submitted an audited financial
19 statement and a bank reference. ISIS2000 was awarded 1.5
20 points. They submitted no financial statement, no bank
21 reference. They do have a letter from Chase Manhattan
22 regarding a credit facility for the parent, not for ISIS, but
23 for the parent, and a D&B report showing no credit rating and
24 negative net worth of \$1,691,275. Those are in the D&B that
25 was submitted by -- well, you-all have seen them, and I think,

1 there is a blow up if you would like for me to refer to any of
2 those specifically?

3 ISIS has attempted to rely apparently on its parent to some
4 extent. Corporations are separate entities, separate legal
5 entities. Without some documentation such as a guarantee from
6 the parent to the subsidiaries, the parent has no liability
7 that is incurred on behalf of the subsidiary.

8 The State of Tennessee is not entering a contract, would
9 not be entering a contract, with the parent which is Great
10 Universal. Great Universal is not obligated to the State of
11 Tennessee for any liability. So without a guarantee for the
12 parent company, any reference to or attempt to rely upon the
13 said parent's net worth or any other assets is simply not
14 relevant.

15 And finally, we would submit that the letter from Chase
16 Manhattan Bank does not say that the credit facility is for
17 ISIS. The most it says the best, the best it can be
18 interpreted, is that the bank has put no restrictions on Great
19 Universal using the money for its subsidiaries; I'm not sure
20 you can gather much out of that other than that.

21 Therefore, based upon this information it appears clear to
22 us that there is nothing wrong with the way that the evaluators
23 assigned the points. That, in fact, ENA has met every
24 requirement of the RFP with regard to documenting financial
25 responsibility and that cannot be a basis for denying the

1 contract to ENA.

2 I know with regard to financial responsibility you-all
3 might have had some questions. We do have the president of
4 ENA, Mr. Albert Ganier, and we have a representative of the
5 bank; if you want to talk to either one of those.

6 In closing, I guess -- all I can sum up in closing is that
7 ENA met every requirement of the RFP. ENA has been evaluated
8 by all four evaluators as the winning proposer. No challenges
9 have been made to the methodology or to the assignment of
10 points. ENA, in fact, was properly awarded the contract and
11 that award should stand. If you have any questions, we will be
12 glad to answer them?

13 COMMISSIONER HAWKINS: Any questions?

14 DEPUTY COMMISSIONER JONES: No.

15 MR. LEE: Ms. Cottrell, in regard to the
16 financial, and the letter from the bank, the way I read that,
17 is a lot of that is just a standard disclosure letter, which
18 the lawyers make them put in there --

19 MS. COTTRELL: Right.

20 MR. LEE: -- it appears that the letter was
21 telling ENA, and the banker may want to say yes or no or
22 whatever, that if you-all get the contract, then we have got
23 something there that -- you know, you have got to have good
24 income coming in that we can look at and we are willing to go
25 up to \$5 million on a letter --

1 MS. COTTRELL: Right.

2 MR. LEE: -- is that the way you-all interpret
3 that?

4 MS. COTTRELL: Right, I'm glad that you asked
5 that because ISIS has said several times that we have made some
6 sort of misrepresentation to the State. I have re-read
7 everything that we have submitted. We submitted that letter.
8 We submitted the audited financial statement where the auditor
9 said, the letter says this subject to da da da da and it
10 includes all of the language.

11 There was one place where we said we have a line of credit
12 subject to getting the contract and documentation. All I can
13 imagine is that somehow ISIS is trying to say that work
14 documentation didn't include all of the conditions that were
15 listed by the bank. Of course, we never intended to say or to
16 misrepresent anything to the State. The letter speaks for
17 itself. Yeah, I think that is exactly what it is.

18 We are very interested in -- it says, I don't want to
19 misquote it -- but essentially it says as you just said that if
20 you get the contract, we are interested and we intend to
21 establish this line of credit. Of course, it is always subject
22 to the bank doing those things that banks always do. It is not
23 an unconditional commitment.

24 MR. LEE: So the contract will be sort of the
25 collateral or the basis for the line of credit?

1 MS. COTTRELL: It is not really collateral but,
2 yes, it is a condition of the line of credit, according to the
3 language of the letter.

4 MR. LEE: Then on the notes receivable, Mr. Ney
5 alluded to the fact and stated the fact that those are still
6 notes receivable that is binding and whether or not the
7 company, you know, enforces those is up to the company but they
8 will be binding agreements between the LLC and whoever issued
9 the notes?

10 MS. COTTRELL: Yes.

11 DEPUTY COMMISSIONER JONES: Will First
12 Tennessee be willing to lend money against those notes
13 receivable? I assume that the collateral is going to be the
14 system, itself, the routers?

15 MS. COTTRELL: No. For the line of credit, the
16 \$5 million line of credit, no, there is not as far as I know --

17 DEPUTY COMMISSIONER JONES: If that line of
18 credit is extended and they decide to use it at some point,
19 then they are going to have to take some type of collateral and
20 encumber the State's system; is that correct?

21 MR. ALBERT GANIER: Would you like for me to
22 speak on this?

23 COMMISSIONER WALTERS: Yes.

24 MR. ALBERT GANIER: I'm Al Ganier, president of
25 ENA, primary shareholder of this company. I have with me today

1 other members that, I think, represent 96 percent of the
2 membership; I have about 70 percent. Mr. Deryl Bauman, with
3 First Tennessee Bank, has been our banker. We submitted that
4 letter as a reference as a capacity to operate. My involvement
5 in this community and business in this community are spoken to
6 in the second paragraph of that letter.

7 I feel comfortable that the bank is prepared to loan us \$5
8 million or more. Particularly, Mr. Jones, if we add to our
9 collateral, the purchase of the assets of the network and also
10 the accounts receivable from the State of Tennessee, we fully
11 expect to meet every condition and every requirement that we
12 have stipulated. I always have in every business negotiation
13 and transaction that I have in this community. That is the
14 reason that you have this letter.

15 With regard to the \$1.5 million of notes, it is the
16 shareholders' representation of the State that we have put real
17 money into the company contrasted with the parent corporation
18 that has left a negative net worth. The State has me to look
19 to with respect to those notes.

20 If we don't perform, the State has Jerry Dunlap of ISDN
21 Net, who is an extraordinary independent service provider in
22 Tennessee. We have credit line representations of \$3.2 million
23 with respect to all of the equipment and services that they
24 provide, which is the high point of any provision with them.

25 We have arranged significantly additional capacities with

1 them. I have no intention of getting into a situation that
2 they have purposely described or that they have cornered my
3 daughter in a dorm in Atlanta to do -- I resent a lot of this.
4 But we have been here too long and I have personally put my
5 name and my money on the line for this. This is just
6 dramatically more than the other opportunity that you have to
7 look at.

8 MS. COTTRELL: Can I address one thing?

9 DEPUTY COMMISSIONER JONES: Sure.

10 MS. COTTRELL: As the RFP was set up, a
11 proposer, as in this case ENA, proposed to buy the network.
12 If, in fact, ENA buys the network, it is not the State's
13 network anymore; clearly all right, title and interest would be
14 transferred to ENA. As the RFP was set up and envisioned,
15 rather than -- well, ENA could -- I'm trying to make sure that
16 I'm not going backwards. Essentially, since the State will be
17 billing ENA for service levels, ENA was able to offset with the
18 payment for the 7.5 million as a credit up to the statement of
19 specific limitation, all of the purchase price had to be used
20 within the first three months. In the RFP, as it was described
21 and clarified in the questions and answers, there was no
22 requirement of the 7.5 million payment as of July 1. I know
23 that issue has now been raised, but certainly that is why the
24 response looks the way it does because of that.

25 DEPUTY COMMISSIONER JONES: That clears it up a

1 little bit.

2 COMMISSIONER HAWKINS: Does the banker want to
3 add anything in the line of credit issue?

4 MR. ALBERT GANIER: If you have any questions,
5 he is the person to ask.

6 UNIDENTIFIED SPEAKER: I represent --

7 COMMISSIONER HAWKINS: Could you identify
8 yourself first, sir?

9 MR. DERYL BAUMAN: My name is Deryl Bauman and I
10 represent First Tennessee Bank, Nashville. I have represented
11 the bank for 16 years in this market. I have known Mr. Ganier
12 both professionally and personally as a client to the bank for
13 at least ten years.

14 He has my utmost regard in terms of his performance. We
15 have been involved in other commercial transactions, very
16 complicated transactions, and he has always done everything
17 that he said he would do and performed his obligations to the
18 bank.

19 I know with respect to the contract, in his performance
20 professionally, I am aware of his personal financial capability
21 and his family's personal capabilities. The capability of the
22 partners of ENA and based on that and my understanding of how
23 the contract is formed, in terms of its content and its form,
24 we will have no problem supporting Mr. Ganier and ENA in this
25 transaction.

1 COMMISSIONER HAWKINS: Thank you. Do you have
2 any questions for Mr. Bauman?

3 DEPUTY COMMISSIONER JONES: No.

4 COMMISSIONER HAWKINS: Okay. Does that conclude
5 everything?

6 MS. COTTRELL: Yes, it does, unless you have
7 anymore questions?

8 COMMISSIONER HAWKINS: Does anyone have any
9 other questions?

10 DEPUTY COMMISSIONER JONES: No.

11 MR. LEE: No, I have none.

12 COMMISSIONER HAWKINS: Any other questions?

13 COMMISSIONER WALTERS: No.

14 COMMISSIONER HAWKINS: Do we need to break at
15 this point or let him have closing comments?

16 MS. METCALF: Closing comments.

17 COMMISSIONER HAWKINS: Let's have closing
18 comments, rebuttal, Mr. Ney.

19 MR. NEY: I have just a few comments. I thank
20 you for giving me this opportunity. It seems to me that most
21 of what we heard from both Ms. Shrago and Ms. Cottrell is
22 really a comparison between the two bids.

23 I will go back to where I started off in this meeting.
24 This is not what the meeting is about to determine who between
25 the two bidders should get this. This is to determine whether

1 ENA can, under the law, and under reason applied to that law to
2 get this contract. We think the answer is no and our protest
3 should be upheld.

4 Irrespective of whether ISIS' bid was comparable or not,
5 comparable or responsive or any of these things that is cast
6 upon ISIS' capabilities, it doesn't matter. The point is what
7 did ENA do; what are they doing? We think that has
8 jeopardized. If anything is jeopardized, ConnectTEN is in its
9 irresponsible application by ENA and also the current intent of
10 the Department of Education to award them a \$75 million
11 contract.

12 We have been hearing about these rates and per school, per
13 contract, per month basis, but I don't know what type of math
14 was applied by Ms. Shrago or Ms. Cottrell to get those numbers,
15 but our numbers are significantly less than those that they are
16 quoting at you with regard to ENA.

17 Again, what we really need to look at is what is happening
18 with this system? The State of Tennessee now owns a system
19 that is valued at somewhere between \$260,000 for its routers to
20 \$12 million, which was the original cost of putting it in
21 there, and we own that. This proposal by ENA says they are
22 going to come in and buy it from us for \$7.5 million and then
23 immediately, within a very brief period of time, lease it back
24 to us for \$7.95 million; why are we doing that?

25 The State owns something, ENA could use it; ISIS could use

1 it. I think we should supplement it, build on it and create
2 something better for this State without having the \$7.5 million
3 charge, which is only explainable if you are gaming the FCC
4 E-rate fund and trying to increase those dollars.

5 Those dollars aren't dollars that have no consequences if
6 we get them and nobody else gets them. Those dollars are real
7 dollars that may better be spent on putting computer
8 connections to the extent that the \$7.5 reflects our money; the
9 \$7.95 million reflects our State money; that is a lot of
10 computer connections that we can buy for the schools. I'm not
11 talking about the eligible internal connections; I'm talking
12 about the computers and the things that don't get paid for by
13 the FCC.

14 We are paying \$7.95 million to lease back a system that we
15 already owned; that is money that could be used for the school.
16 The other \$16 million is money that maybe Tennessee could use
17 or Ohio could use or Kentucky or Alabama, but it is money
18 coming out of the federal fund that is going to be taken away
19 from school children.

20 I guess with respect to the financial responsibility issue,
21 I'm sort of astounded at the conversation. There is a negative
22 net worth of a company that has net operating, annual
23 operating, revenues that are hundreds of times greater than
24 what is represented by ENA. If that is the type of analysis
25 that is being applied, then we have got a lot of problems with

1 the contract process.

2 I think a couple of important things are -- well, ISIS does
3 rely to some extent on its parent and ENA is totally reliant on
4 its parents, which is Mr. Gainer and the other people who
5 signed \$1.5 million notes. Mr. Ganier is not responsible to
6 the State. Mr. Ganier is responsible to the LLC, which is
7 responsible to the State and there is a big jump between there
8 so he is not guaranteeing anything to the State.

9 I don't know what personal financial worth is because he
10 didn't submit that to show that he could stand behind whatever
11 the amount of the note is that he has signed towards his
12 company. So, yeah, I guess everybody is relying on their
13 parent a little bit.

14 There is something very important to remember, the proposal
15 of ENA requires \$7.5 million in cash. Mr. Bauman didn't say
16 when this contract is signed, they have the \$5 million line of
17 credit. Basically, it is like the letter said, come on in and
18 we will talk and negotiate; it doesn't say it is an attempt to
19 give it; it says, an intent to discuss and negotiate. There is
20 still a review committee, a credit committee, that is going to
21 have to approve it and I don't think Mr. Bauman is ready --
22 maybe he is. If he is, he should stand up and say the credit
23 committee stands ready on the signing of this contract, but
24 that is not the case.

25 But given the \$5 million and given the \$1.5 million notes

1 from Mr. Ganier, we are still \$1 million short that has to be
2 paid to the State in order for ENA to even begin what they
3 proposed to do, which is to take ownership of the system and
4 its components and routers. Then to sell that system back to
5 us for the next three and a half years or actually at least the
6 next 18 months, is what in their own proposal says that they
7 are going to be relying on that system. They don't have the
8 money; they can't do it. Even under the best case scenario
9 that they have layed out here, they just don't have it. The
10 ISIS proposal didn't require \$7.5 million because we are not
11 gaming the federal system that way.

12 To the extent that someone has suggested today that what we
13 may be able to do is deal on a credit basis, that just can't be
14 done. It is not the law of Tennessee; it is not permitted
15 under the law of Tennessee. To the extent that there may be
16 some carving out done by the FCC with respect to
17 eligible/ineligible funds, if they carve out the \$7.5 million
18 you have fundamentally altered the cost proposal and the entire
19 process by which ENA got this award. That is a basis for a
20 protest. In fact, that is the basis for the State to want to
21 re-bid because they didn't get anything close to what was being
22 proposed.

23 So it will not ultimately be that whatever the FCC says is
24 ineligible; it just means that we will alter our contract; that
25 is inappropriate. That is why you have to consider that now

1 because of the extent that there is that risk, we believe it is
2 very real and very likely to occur. You imperil the ConnectTEN
3 system by entrusting it to ENA and jeopardizing the funding of
4 the entire system.

5 I think the most compelling thing that was said, which was
6 slightly corrected or modified by Ms. Shrago, was that she
7 talked about the fact that the FCC filing has been made and
8 that may throw everything off kilter and may disqualify the
9 State or may make it very likely or likely that the State will
10 not qualify for 1998 funds.

11 I don't know if that is the case or not. I do know that I
12 think the State proceeds under a serious cloud and at great
13 risk should they proceed to execute this contract in view of
14 the FCC's consideration of this proposal. I would not purport
15 that it is a done deal in any way. However, it is a great
16 risk.

17 To the extent the State has those concerns, and Ms. Shrago
18 and Commissioner Walters made a comment also that suggested
19 that she had similar concerns, that is the best reason in the
20 world to grant the protest and re-bid this contract in a way
21 that we know is going to work under the federal system and
22 ensure that we have a ConnectTEN program being provided by a
23 responsible provider, whose proposal is consistent with federal
24 laws and requirements.

25 Also, if there is going to be a sale of State property,

1 let's make sure that the State property sale is done according
2 to State law. When we remove all of these clouds and fix it,
3 we have from July 1st, that is easily enough time given the
4 last window and period, and I would say that is the good reason
5 to do it. It is the smart way to do it; it is the responsible
6 way to do it for the State. Thank you very much for the time
7 that you have given us.

8 COMMISSIONER HAWKINS: Do we need to take a
9 break or move on to the issues?

10 MS. METCALF: Do you want to take a break or
11 move on?

12 COMMISSIONER WALTERS: Move on.

13 COMMISSIONER HAWKINS: For the record, I have
14 not asked for permission to say this but I will ask for
15 forgiveness now and permission later. We need to try to draw
16 it to a conclusion. Ms. Shrago is due to catch a plane at
17 12:45. Her father passed away Friday morning in the middle of
18 this hearing. I find it personally kind of amazing that she is
19 here under these circumstances; we certainly extend our
20 sympathy.

21 We have been here a long time this morning and, I think we
22 have had adequate time to digest, process and analyze the
23 issues. But let's take a short five minute recess and then see
24 if we can bring this to an end

25 MS. SHRAGO: Let me just say that in honoring my

1 father, and the gracious consent of my mother and brother, is
2 the reason I'm here this morning.

3 COMMISSIONER HAWKINS: You have done very well
4 under some tough circumstances.

5 (Whereupon, a short recess was taken at 12:11
6 p.m.)

7 (Whereupon, the following hearing resumed at
8 12:18 p.m.)

9 COMMISSIONER HAWKINS: Okay. I think we are
10 ready to move to the points of the protest. Ms. Metcalf, if
11 you would walk us through those, please?

12 MS. METCALF: Sure. I will start with the
13 property disposition issue. Then we will go through the issues
14 one by one if that is okay with the committee? The first issue
15 being does the committee have jurisdiction of the property
16 disposition?

17 DEPUTY COMMISSIONER JONES: I make a motion that
18 the proper jurisdiction for that issue is the Commissioner of
19 General Services or the Board of Standards and that issue
20 should be taken up by that group rather than this one.

21 MR. LEE: I will second that.

22 COMMISSIONER HAWKINS: All in favor?

23 (Whereupon, all review committee members said,
24 Aye.)

25 MR. LEE: I would like to also -- the timeliness

1 of that one. Do we need to address that?

2 MS. METCALF: The second issue was, does the
3 committee want to address the timeliness issue?

4 MR. LEE: I will make a motion on that, that it
5 was not timely filed within the ten days of notice on the
6 should have known.

7 DEPUTY COMMISSIONER JONES: I will second that.

8 COMMISSIONER HAWKINS: All in favor?

9 (Whereupon, all review committee members said,
10 Aye.)

11 MS. METCALF: The next issue is whether ENA
12 failed to submit cost data in a sealed envelope.

13 DEPUTY COMMISSIONER JONES: I would like to make
14 a motion on that. Based upon Ms. Shrago's testimony here today
15 and her credibility, I think we should uphold the
16 Commissioner's prior ruling on that and deny this issue.

17 MR. LEE: I second that.

18 COMMISSIONER HAWKINS: All in favor?

19 (Whereupon, all review committee members said,
20 Aye.)

21 MS. METCALF: Whether ENA's cost proposal
22 misrepresents E-rate rules and funding?

23 MR. LEE: First on that one, I think we need to
24 look to see if the RFP was complied with on the E-rate funding.
25 I can't see anything that said that the RFP was not complied

1 with and that everything submitted on behalf of ENA was within
2 the scope of the RFP. So I would make a motion that the RFP
3 was complied with as it relates to E-rate funding.

4 DEPUTY COMMISSIONER JONES: I will second that.

5 COMMISSIONER HAWKINS: All in favor?

6 (Whereupon, all review committee members said,
7 Aye.)

8 MS. METCALF: Whether the legal status of ENA to
9 participate in the process is questionable?

10 DEPUTY COMMISSIONER JONES: I move that the
11 certificate that was issued by the Secretary of State's office
12 is conclusive evidence that this entity did exist. Therefore,
13 I deny that motion or that issue.

14 MR. LEE: I will second that.

15 COMMISSIONER HAWKINS: All in favor?

16 (Whereupon, all review committee members said,
17 Aye.)

18 MS. METCALF: Whether ENA failed to complete
19 required tests?

20 COMMISSIONER HAWKINS: Do I have a motion on
21 that?

22 MR. LEE: It appears that the testing was done
23 fairly for both proposers and that the same points were given
24 to both of those, too. The objectives obtained from
25 Ms. Shrago's testimony was that we was comfortable with the

1 testing and that both parties felt it was adequate. On that, I
2 will make a motion that the Commissioner's determination be
3 upheld on the testing.

4 DEPUTY COMMISSIONER JONES: I will second that
5 motion.

6 COMMISSIONER HAWKINS: All in favor?

7 (Whereupon, all review committee members said,
8 Aye.)

9 MS. METCALF: The final issue is whether ENA
10 lacks the requisite financial responsibility to fulfill its
11 obligation under its proposal?

12 COMMISSIONER HAWKINS: Do I have a motion?

13 DEPUTY COMMISSIONER JONES: I think the
14 testimony that we have heard here from both the bankers, the
15 issue of the letter of credit, from Mr. Ganier and from the
16 State, I know that they looked at it in good faith and wanted
17 to make sure that he had the wherewithal to follow through with
18 this proposal. So I deem that issue should be denied and
19 uphold Commissioner Walters' original ruling on that.

20 MR. LEE: I would like to point out also that
21 ENA, from looking at the language of the RFP, that everything
22 was complied with. They submitted the audited financials and
23 then they even got a letter from the bank, so I will second
24 that motion.

25 COMMISSIONER HAWKINS: All in favor?

1 (Whereupon, all review committee members said,
2 Aye.)

3 COMMISSIONER HAWKINS: Okay. It would be the
4 vote of the committee then to uphold the decision of
5 Commissioner Walters. Any other comments?

6 (Whereupon, no one spoke.)

7 COMMISSIONER HAWKINS: Do I hear a motion to
8 adjourn?

9 DEPUTY COMMISSIONER JONES: I move that we
10 adjourn.

11 MR. LEE: I second that.

12 COMMISSIONER HAWKINS: Okay. All in favor?

13 (Whereupon, all review committee members said,
14 Aye.)

15 COMMISSIONER HAWKINS: Thanks to each of you. I
16 know it has been a long weekend and tough issues. There was
17 good presentations by all parties concerned.

18 (Whereupon, the following meeting was adjourned
19 at 12:25 p.m.)

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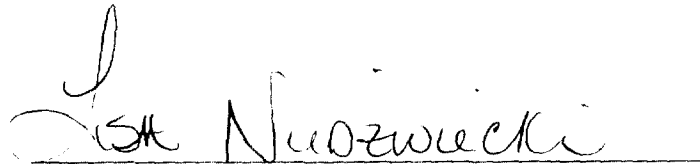
1 STATE OF TENNESSEE)
2) SS.
3 COUNTY OF DAVIDSON)
4

5 I, LISA NIEDZWIECKI, Notary Public in and for the State
6 of Tennessee at Large,

7 DO HEREBY CERTIFY that the foregoing hearing thereof and
8 the proceedings of said hearing were stenographically reported
9 by me in shorthand; and that the foregoing pages constitute a
10 true and correct transcription of said proceedings to the best
11 of my ability.

12 I FURTHER CERTIFY that I am not a relative or employee
13 or attorney or counsel for any of the parties hereto; nor a
14 relative or an employee of such attorney or counsel, nor do I
15 have any interest in the outcome or events of this action.

16 IN WITNESS WHEREOF, I have hereunto affixed my official
17 signature and seal of office this 14th day of April, 1998.

18
19 
20

21 My Commission Expires July 24, 1999
22

